

Loans to corporate groups.

Both Parts 31 and 32 will consider a loan that was made to a corporation to have been made to a third person if the tests identified in the previous discussion of the “General Rule” are satisfied. If these tests are not met, Parts 31 and 32 still may require attribution, but the circumstances when this will occur and the consequences of attribution under these circumstances differ under the two rules. Under Part 31, a loan to a corporation will be deemed to have been made to an insider if the corporation is a “related interest” of the insider (*i.e.*, the insider owns at least 25% percent of a class of voting shares of the company, controls the election of a majority of the company’s directors, or has the power to exercise a controlling influence over the company). Under Part 32, a loan to an individual or company will not be considered to have been made to a corporate group until a “person” (which includes individuals and companies) owns more than 50% of the voting shares of a company. If a loan is found to have been made to a related interest of an insider under Part 31, the loan must comply with all of the insider lending restrictions of Part 31. If a loan is found to have been made to a corporate group under Part 32, the loan, when aggregated with all other loans to that corporate group, generally may not exceed 50% of the bank’s capital and surplus.

[61 FR 54536, Oct. 21, 1996]

## PART 32—LENDING LIMITS

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AUTHORITY: 12 U.S.C. 1 *et seq.*, 84, and 93a.

SOURCE: 60 FR 8532, Feb. 15, 1995, unless otherwise noted.

### § 32.1 Authority, purpose and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1 *et seq.*, 12 U.S.C. 84, and 12 U.S.C. 93a.

(b) *Purpose.* The purpose of this part is to protect the safety and soundness of national banks by preventing excessive loans to one person, or to related persons that are financially dependent, and to promote diversification of loans and equitable access to banking services.

(c) *Scope.* (1) This part applies to all loans and extensions of credit made by national banks and their domestic operating subsidiaries. This part does not apply to loans made by a national bank and its domestic operating subsidiaries to the bank’s “affiliates,” as that term is defined in 12 U.S.C. 371c(b)(1), to the bank’s operating subsidiaries, or to

Edge Act or Agreement Corporation subsidiaries.

(2) The lending limits in this part are separate and independent from the investment limits prescribed by 12 U.S.C. 24 (Seventh), and a national bank may make loans or extensions of credit to one borrower up to the full amount permitted by this part and also hold eligible securities of the same obligor up to the full amount permitted under 12 U.S.C. 24 (Seventh) and 12 CFR part 1.

(3) Extensions of credit to executive officers, directors and principal shareholders of national banks, and their related interests are subject to limits prescribed by 12 U.S.C. 375a and 375b in addition to the lending limits established by 12 U.S.C. 84 and this part.

(4) In addition to the foregoing, loans and extensions of credit made by national banks and their domestic operating subsidiaries must be consistent with safe and sound banking practices.

### § 32.2 Definitions.

(a) *Borrower* means a person who is named as a borrower or debtor in a loan or extension of credit, or any other person, including a drawer, endorser, or guarantor, who is deemed to be a borrower under the “direct benefit” or the “common enterprise” tests set forth in § 32.5.

(b) *Capital and surplus* means—

(1) A bank’s Tier 1 and Tier 2 capital calculated under the OCC’s risk-based capital standards set forth in Appendix A to 12 CFR part 3 as reported in the